IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 690 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KULSHANMA YUSUFBHAI

Versus

COMPETENT AUTHORITY ADN DY COLLECTOR

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR KG SHETH, AGP for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 16/06/2001

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution, the petitioner has challenged the judgment and order dated 13.12.1991 passed by the learned Extra Assistant Judge, Junagadh dismissing Regular Civil Appeal No. 120 of 1991 and confirming the order dated 16.5.1991 passed by the Deputy Collector, Junagadh, competent authority under the Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972 (hereinafter referred to as "the Act") in Eviction Case No. 43 of 1990.

2. The subject matter of the petition is the government premises known as "Satghar Deli", Near Sidi Pir Dargah Bukar Falia in Jungadh town. The petitioner's case is that the petitioner's father was in service of Pir Dargah Bukar Falia in Junagadh town. The petitioner was given rent free quarter in the year 1931 and after the father's death the petitioner continued to occupy the quarter in the capacity of the heir of deceased Kalu Umar. The competent authority under the Act served the notice of eviction on the ground that the petitioner was in unauthorized occupation of the premises; that the petitioner was not paying rent for the premises in question and also on the ground that the building in question was in dilapidated condition. After hearing the petitioner, the competent authority passed the order of eviction on the ground that the petitioner was in unauthorized occupation of the premises without any order of allotment and also on the ground that the building in question was in dilapidated condition. The learned Extra Assistant Judge confirmed the order of the competent authority on the ground that it is for the competent authority to record its satisfaction that any of the reasons specified in Section 4(1) of the Act exists and when the petitioner is in possession of the property for more than 60 years, there are no reasons for the appropriate authority to obtain possession of the premises under any false excuse.

3. The learned counsel for the petitioner has raised various contentions. It is, however, not necessary to deal with those contentions as the petition deserves to be allowed and the matter deserves to be remanded to the appellate authority on the short ground that the reasons recorded by the appellate authority are very cryptic and laconic and do not show proper application of mind. Without suggesting that the judgments and orders of the appellate authority under the Act should be elaborate lengthy judgments, the appellate authority was required to deal with the contentions raised on behalf of the appellant-petitioner. The learned Extra Assistant Judge has not even referred to the designation of the employee who was examined to substantiate the say that the premises is in dilapidated condition. The appellate authority ought to have referred to the designation of the officer/employee examined to substantiate the case of the Government that the building is in dilapidated condition and ought to have given a specific finding of fact on this issue. The appellate authority ought to have dealt with the contention that the appellant-petitioner is not in unauthorized occupation of the premises in question and given his finding thereon.

4. In view of the above discussion, the petition is partly allowed. The judgment and order dated 13.12.1991 of the learned Extra Assistant Judge in Regular Civil Appeal No. 120 of 1991 is hereby set aside and the matter is remanded to the appellate authority for fresh hearing and decision in accordance with law on all issues which may be raised before the appellate authority.

Rule is accordingly made absolute with no order as to costs.

(M.S. Shah, J.)

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